

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the)
Complaint Against)
ART WESTWOOD)

**SUMMARY OF FACTS
AND
STATEMENT OF FINDINGS**

John Bohlinger (Complainant), the Republican incumbent and a candidate for House District 14 in the 1996 primary election, filed a complaint against Art Westwood (Respondent), his Republican opponent in that primary election. The complaint alleges that Art Westwood violated section 13-35-234 and section 13-37-131, Montana Code Annotated (MCA), by making false statements reflecting on Complainant's character or morality and by misrepresenting Complainant's position on public issues. The complaint alleges four separate violations of the statute.

Claim 1

Complainant alleges that Respondent and his campaign workers told voters of House District 14 that "the Republican Party" had asked Respondent to run against Complainant in the primary election.

Claim 2

Complainant alleges that Respondent and his campaign workers told a select number of voters from House District 14 that Complainant's wife volunteered at Planned Parenthood and was a member of the Board of Directors.

Claim 3

Complainant alleges that Respondent and his campaign workers told numerous voters of House District 14 that Complainant was "for sodomy."

Claim 4

Complainant alleges that Respondent's campaign workers telephoned members of the National Rifle Association (NRA) and indicated that Respondent was officially endorsed by the NRA. Complainant alleges that the NRA did not endorse Respondent.

SUMMARY OF FACTS

1. John Bohlinger and Art Westwood were Republican opponents for a legislative seat in House District 14 in the June, 1996 primary election. John Bohlinger was the incumbent, having served as representative for District 94, and then, subsequent to re-districting, was elected as representative for House District 14 in 1994. He is now a candidate for re-election to House District 14 in the 1996 election. Art Westwood has never held public office.

Claim 1

2. During the campaign, Complainant received information that led him to believe that Respondent and/or his campaign workers were making statements that the Republican Party had asked Respondent to run against Complainant. One written statement claimed that one district voter was told by another district

voter that Respondent's campaign workers had told voters that the Republican Party had asked Respondent to run against Complainant.

3. The Republican Party did not recruit Respondent to run against Complainant. The Republican Party does not recruit Republicans to run against other Republicans in any organized fashion.

4. Individual Republicans, some of whom are legislators, encouraged Respondent to run against Complainant. A number of Respondent's supporters sent a letter of support to the voters of House District 14. The letter stated four reasons why the group endorsed Respondent as the candidate of their choice. The letter was signed by Senator Tom Keating, Representative Peggy Arnott, Representative Bonnie Martinez, Representative Alvin Ellis, Jr., Representative David McGee, Senator Ken Miller, and Representative Brad Molnar.

5. Respondent states that he was not asked by the Republican Party to run against Complainant; however, numerous fellow Republicans supported and encouraged his campaign.

6. Respondent's campaign workers deny making any statements indicating that "the Republican Party" asked Respondent to run against Complainant. However, one campaign worker acknowledges that she made the statement several times that "Republicans asked Art Westwood to run against John Bohlinger."

Claim 2

7. During the campaign, several voters from House District 14 sent signed

statements to Complainant that a campaign worker representing Respondent canvassed the neighborhood door-to-door. During these visits, several voters mentioned that the campaign worker stated that Complainant's wife volunteered at the Planned Parenthood office and was on the Board of Directors for that organization. Further, these individuals were offended by the manner in which the campaign worker made these statements.

8. Complainant's wife is not involved with the Planned Parenthood organization on any level, nor has she ever been involved with that group. Joan McCracken, Director of Intermountain Planned Parenthood in Billings, indicated that none of the Bohlingers have ever been involved with any aspect of Planned Parenthood's activities. McCracken has served as Director of Planned Parenthood in Billings for more than 20 years.

9. The Planned Parenthood office in Billings was called by a number of voters from House District 14, inquiring as to Complainant's involvement with the organization. McCracken stated that she received nearly a dozen of these calls the last few weeks in May, 1996.

10. Respondent's mother was involved heavily in her son's campaign effort. She canvassed the neighborhood, visited with voters, ran errands, and assisted with blitzes. She admits making the statement that Complainant's wife was a volunteer at Planned Parenthood, but denied that she ever stated that Complainant's wife was on the Board of Directors. She admits that she did not verify this statement with the

Planned Parenthood office. She states that she heard that this was true from a number of people and had no reason to think it was not true. Further, she did not consider it a compelling issue in the campaign. She states that Respondent was more concerned with parental notification issues in abortion matters.

Claim 3

11. During the campaign the issue of decriminalization of consensual homosexual acts was discussed. Complainant alleges that during the campaign, statements were made by Respondent and his campaign workers that Complainant was "for sodomy." Complainant states that while he supports decriminalizing consensual homosexual acts, he is not a proponent of the act or the lifestyle.

12. McCracken stated that a few of the voters who called her stated that they were told by campaign workers that Complainant was the "champion of sodomy."

13. The Billings Gazette published numerous articles pertaining to the Bohlinger-Westwood race. One article entitled "Republicans square off" consisted of statements from both candidates regarding the issues. The Complainant was quoted in that article as saying that he would "work to decriminalize homosexual acts."

14. Complainant acknowledges his support for the decriminalization of consensual homosexual acts; however, he distinguished this from active support of a gay lifestyle.

15. Two constituents submitted signed statements indicating that campaign workers had knocked on their doors and told them that Complainant "voted for sodomy" and this would bring more homosexuals to the state and, further, that "they are spreading AIDS."

16. Respondent and Respondent's mother stated that Complainant initially brought up the issue of decriminalization of homosexual acts. She also admitted telling voters that Complainant supported gay rights legislation. She pointed out that this was a difference in the beliefs of the two candidates.

Claim 4

17. Complainant alleges that Respondent and his campaign workers telephoned members of the National Rifle Association and stated that Respondent had been endorsed by the NRA. Complainant alleges that the NRA did not officially endorse Respondent.

18. The Political Action Coordinator of the NRA verified that the NRA did, in fact, endorse Respondent as the candidate of choice. The endorsement occurred in mid-April of 1996, well before the primary election.

19. NRA officials stated that the membership lists of the NRA are confidential and are not shared with any candidates, whether or not the candidate earned NRA endorsement. Political campaign telephone calls are made to voters in targeted districts; however, these calls are always made by NRA staff, without exception. In addition, these calls are made from the headquarters offices in

Virginia. The Political Action Coordinator was unable to verify, in this case, whether telephone calls were made prior to the primary election.

20. A written statement was submitted to Complainant indicating that an individual did call at least one voter in House District 14 to urge support for the Respondent. The caller identified herself as representing the NRA.

STATEMENT OF FINDINGS

Section 13-35-234, MCA, provides:

Political criminal libel -- misrepresenting voting records. (1) It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality or to knowingly misrepresent the voting record or position on public issues of any candidate. A person making such a statement or representation with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

(2) In addition to the misdemeanor penalty of subsection (1), a successful candidate who is adjudicated guilty of violating this section may be removed from office as provided in 13-35-106 and 13-35-107.

Section 13-37-131, MCA, provides:

Misrepresentation of voting record -- political civil libel. (1) It is unlawful for a person to willfully or negligently make or publish a false statement about a candidate's public voting record or to make or publish a false statement that reflects unfavorably upon a candidate's character or morality.

(2) It is unlawful for a person to willfully or negligently provide false information to a candidate concerning another candidate's public voting record when the person knows or should know that the information will be made public during the course of a campaign.

(3) For the purposes of this section, the public voting record of a candidate who was previously a member of the legislature includes a vote of that candidate recorded in committee minutes or in journals of the senate or the house of representatives. Failure of a person to verify a public voting record is evidence of the person's willful or negligent conduct if the statement made by the person or the information provided to the candidate is false.

(4) A person violating subsection (1) or (2) is liable in a civil action brought by the commissioner or county attorney pursuant to 13-37-124 for an amount up to \$1,000. An action pursuant to this section is subject to the provisions of 13-37-129 and 13-37-130.

Section 13-35-234, MCA, is a criminal statute and, therefore, must be strictly construed and must not be extended by construction. Montana Automobile Association v. Greely, 193 Mont. 378, 389, 632 P.2d 300, 306 (1981); Shipman v. Todd, 131 Mont. 365, 368, 310 P.2d 300, 302 (1957). In order to establish that a violation of the statute took place, it must be proven that either a false statement reflecting on a candidate's character or morality was made, or a misrepresentation of a candidate's voting record was made. If either one of the above elements is proven, next, it must be proven that the false statement or misrepresentation was made "knowingly" or with "reckless disregard" as to whether it was true or not.

Section 13-37-131, MCA, also requires that the above elements be proven. However, in this civil statute, the standard of proof differs from the criminal statute. The civil statute requires that the false statement or misrepresentation be made "willfully" or "negligently."

Claim 1

Based on the allegation in the complaint and the facts disclosed in the

investigation, it is my conclusion that no violation took place. Complainant alleged that Respondent and/or his campaign workers told voters of the district that the "Republican Party" had asked Respondent to run against Complainant. Respondent and his campaign workers admit that they made statements that "Republicans" had asked Respondent to run against Complainant.

The Republican Party does not recruit candidates to run against other incumbent Republican candidates in primary elections. The Republican Party denies that any organized effort to endorse Respondent existed. However, numerous Republican legislators did support Respondent's campaign and encouraged him to run against Complainant.

While it appears that no statements were made that included the phrase that the "Republican Party" had asked Respondent to run, even if these statements were made, this does not constitute a violation. These statements are purely political statements and do not reflect on Complainant's character or morality.

Claim 2

The statements made about the involvement of Complainant's wife with Planned Parenthood are not true. In fact, no member of Complainant's immediate family ever volunteered at the Planned Parenthood office, nor did any member of Complainant's immediate family ever serve on the Board of Directors. At least one of Respondent's campaign workers repeated these false statements.

The next step in analyzing this claim is to determine whether these false statements reflect on Complainant's character or morality. I have determined that while it is certainly in poor taste to repeat unfounded, untrue rumors regarding an opponent's spouse, these false statements do not reflect on Complainant's character or morality. While these statements may relate to the issue of abortion, it is just that, an issue. Abortion has become one of the most disputed and discussed political issues of our time. Therefore, I conclude that the false statements made pertaining to Planned Parenthood were of a political nature, and do not reflect on Complainant's character or morality. In addition, the false statements were not made about Complainant himself, rather the false statements pertained to his spouse, who was not a candidate.

The Code of Fair Campaign Practices was signed by Respondent prior to the primary election. It is the desire of the Commissioner of Political Practices that all candidates not only sign the voluntary pledge, but also vigilantly abide by the Code. Certainly, repeating unfounded rumors about another candidate or that candidate's family is contrary to abiding by the Code of Fair Campaign Practices. Although the allegations of this claim are true and false statements were made, those statements did not violate the criminal or civil political libel provisions of the law.

Claim 3

The Complainant alleges that Respondent and/or his campaign made statements that Complainant was "for sodomy," which he claims is untrue. In an

article published by the Billings Gazette prior to the primary election, Complainant was quoted discussing the issue of decriminalization of homosexual acts between consenting adults. During the course of the investigation it was revealed that the statements attributed to Complainant in the article accurately represent his views on the issue.

Respondent and his campaign workers disagreed with Complainant's position on this issue. Their remarks during the campaign obviously reflect that disagreement. Clearly, the remarks are slanted from Respondent's perspective, as is often the case in political speech. They do not, however, violate either statute. The remarks constitute expressions of opinion pertaining to a political issue discussed by both candidates.

Claim 4

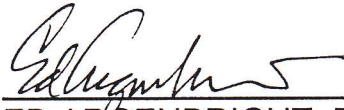
The allegations made by Complainant claiming that the National Rifle Association (NRA) did not endorse Respondent and that Respondent indicated that he had been endorsed by the NRA are without foundation. In fact, the NRA did endorse Respondent and did so in mid-April of 1996. The NRA frequently reviews the actions of incumbent candidates and discusses the various viewpoints of opposing candidates to determine which candidate best reflects the organization's agenda. That is precisely what occurred in this case. Respondent indicated to voters within the district that he had been endorsed, which is the truth. In addition,

the NRA contacted voters within the district to inform them of the organization's choice for the legislature, as is frequently the practice. No violation occurred.

Conclusion

Based on the preceding facts and findings, there is insufficient evidence to conclude that Art Westwood violated either section 13-35-234 or section 13-37-131, MCA.

DATED this 25th day of July, 1996.



ED ARGENBRIGHT, Ed.D.
Commissioner of Political Practices